

20 NORTH 3RD STREET
LAFAYETTE, INDIANA 47901-1209

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SALLIE DELL FAHEY
EXECUTIVE DIRECTOR

January 19, 2011
Ref. No.: 12-008

Tippecanoe County Commissioners
20 North 3rd Street
Lafayette, IN 47901

CERTIFICATION

RE: **Z-2474--HERON BAY DEVELOPMENT, LLC (The Reserve at Raineybrook, Phase 2 PD) (PDRS to PDRS):**

Petitioner is requesting rezoning of 7.48 acres for 30 single-family detached condominiums located on Spinnaker Trace off of Admirals Pointe Drive, Wea 18 (NW) 22-4. CONTINUED FROM THE DECEMBER APC MEETING BECAUSE THE APC STAFF DID NOT RECEIVE THE NOTICE TO INTERESTED PARTIES.

Dear Commissioners:

As Secretary to the Area Plan Commission of Tippecanoe County, I do hereby certify that at a public hearing held on January 18, 2011 the Area Plan Commission of Tippecanoe County voted 14 yes - 0 no on the motion to rezone the subject real estate from PDRS to PDRS, contingent on meeting all requirements of UZO 2-28-10 for submission of Final Detailed Plans, signed off by those noted in that section to include:

1. All sheets (other than preliminary plat) that make up the approved Preliminary Plan;
2. PD construction plans per UZO Appendix B2-2;
3. A final plat per UZO Appendix B-3-2 as applicable;
4. Completed public improvements, or a request to bond in lieu of completion, when the final plat is submitted.
5. The County Highway Department requires that no utilities run through the traffic channeling islands.
6. The Final Plat shall designate the four common areas (the two traffic channeling islands and the common area inside and outside of Spinnaker Trace) as outlots and shall label them outlots A through D.

Therefore, the Area Plan Commission of Tippecanoe County recommends to the Tippecanoe County Commissioners that the proposed rezoning ordinance be APPROVED for the property described in the attachment.

Public Notice has been given that this petition will be heard before the Tippecanoe County Commissioners at their February 6, 2011 regular meeting. Petitioners or their representatives must appear to present their case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sallie Dell Fahey".

Sallie Dell Fahey
Executive Director

SDF/lmu

Enclosures: Staff Report & Ordinances

cc: Gregory Milakis, Heron Bay Development
William Davis, Raineybrook
Roger Fine, John E. Fisher & Associates
Ken Brown, Building Commissioner
Vectren
Duke Energy
Comcast
Frontier Communications

ORDINANCE NO. 2012-06-CM

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF
TIPPECANOE COUNTY, INDIANA, TO REZONE CERTAIN REAL ESTATE
FROM PDRS TO PDRS

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF TIPPECANOE, INDIANA:

Section 1. The Unified Zoning Ordinance of Tippecanoe County, Indiana, being a separate ordinance and not part of a unified county code is hereby amended to rezone the following-described real estate situated in Wea Township, Tippecanoe County, Indiana, to-wit:

(See attached Land Description)

Section 2. The real estate described above should be and the same is hereby rezoned from PDRS to PDRS.

Section 3. This ordinance shall be in full force and effect from and after its passage.

(Adopted and passed) (Denied) by the Board of Commissioners of Tippecanoe County, Indiana, this 6th day of February, 2012.

VOTE:

y

David Byers
DAVID BYERS, President
THOMAS P. MURTAUGH

y

John Knochel
THOMAS MURTAUGH, Vice President
JOHN KNOCHHEL

y

David Byers
JOHN KNOCHHEL, Member
DAVID BYERS

ATTEST:

Jennifer Weston
JENNIFER WESTON, Auditor

LEGAL DESCRIPTION (SUBJECT TRACT)

A part of the Northwest Quarter of Section 18, Township 22 North, Range 4 West, Wea Township, Tippecanoe County, Indiana, being a part of the RBROOK, LLC property as described in Document Number 200101025914 in the office of the Tippecanoe County Recorder, and being depicted on an ALTA / ACSM Land Title Survey prepared by TBIRD Design Services Corp. Job Number 11049, more completely described as follows:

Commencing at a Berntsen A1NB monument marking the southeast corner of the Southwest Quarter of said Section 18; thence North 00°46'08" West along the east line of said Southwest Quarter, 2022.22 feet to the south line of the Suesro, Inc. real estate as described in Deed Record 76-4945 in said recorder's office; thence North 89°56'29" West along said south line, 1328.83 feet to the west line of said Suesro, Inc. real estate; thence North 00°20'49" West along said west line, 657.96 feet; thence continue along said west line North 00°02'56" West, 244.04 feet to the POINT OF BEGINNING being marked by a ¾" diameter rebar with yellow plastic cap stamped "TBIRD FIRM #0052" hereinafter referred to as a TBIRD capped rebar; thence continue along said west line North 0°02'56" West, 415.96 feet to the north line of said Suesro, Inc. real estate; South 89°46'22" East along said north line, 835.14 feet to a TBIRD capped rebar; thence South 0°13'38" West, 40.73 feet to a TBIRD capped rebar; thence South 14°07'24" West, 152.68 feet to a TBIRD capped rebar; thence South 28°11'30" West, 315.90 feet to a TBIRD capped rebar; thence along the northerly bounds of the Reserve at Raineybrook, Phase One as depicted on the plat thereof, Document Number 200101032410 in said recorder's office for the following seven (7) courses: 1) North 58°46'43" West, 156.01 feet to a TBIRD capped rebar; 2) North 31°13'17" East, 5.99 feet to a TBIRD capped rebar; 3) South 89°57'04" West, 121.06 feet to a TBIRD capped rebar; 4) South 0°02'56" East, 63.75 feet to a TBIRD capped rebar; 5) South 89°57'04" West, 168.00 feet to a TBIRD capped rebar; 6) North 0°02'56" West, 32.77 feet to a TBIRD capped rebar; 7) South 89°57'04" West, 228.78 feet to the POINT OF BEGINNING, containing 7.48 acres, more or less.

SUBJECT TO ALL EASEMENTS, RESTRICTIONS, AND RIGHTS-OF-WAY
OF RECORD

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE RESERVE AT RAINEYBROOK PLANNED DEVELOPMENT
PHASE II

Heron Bay Development, LLC, an Indiana limited liability company, is the owner of certain real estate in Wea Township, Tippecanoe County, Indiana, which is more particularly described in the attached Exhibit "A", which is incorporated herein by reference (the "Real Estate").

Heron Bay Development, LLC does hereby submit the Real Estate to the following covenants, restrictions and conditions to govern the use and occupancy of the lots located therein.

Heron Bay Development, LLC hereby declares that the Real Estate described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Real Estate and be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1 – ADOPTION OF COVENANTS

The Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Reserve at Raineybrook Planned Development, dated May 5, 2011 and recorded June 14, 2011 in the Office of the Tippecanoe County Recorder as instrument number 201111009865, a copy of which is attached hereto and incorporated by reference ("Original Declaration"), is hereby adopted as the Declaration of Covenants, Conditions and Restrictions for The Reserve at Raineybrook Planned Development Phase II, with the addition of the language set out in Article 2 of this Phase II Declaration.

ARTICLE 2 – ADDITIONAL LANGUAGE

The following language is hereby added to the definition of Common Area in Section 1.7 of the Original Declaration:

In addition, the areas of each Lot being outside of the area containing i) a Dwelling Unit, and ii) a one foot perimeter around such Dwelling Unit, shall be considered to be Common Area, regardless of whether or not such area is labeled as such or conveyed to the Association.

ARTICLE 3 – DEFINED TERMS

Capitalized terms not defined herein have the meanings set out in the Original Declaration.

IN WITNESS WHEREOF, the undersigned, being the assignee Declarant as to Phase II of The Reserve at Raineybrook Planned Development, has caused this Declaration to be executed this ____ day of _____, 2012.

HERON BAY DEVELOPMENT, LLC

By: _____
Gregory A. Milakis, Member

STATE OF INDIANA)
)
COUNTY OF TIPPECANOE)

Before me, a Notary Public in and for said County and State, personally appeared **Heron Bay Development, LLC, by Gregory A. Milakis, Member**, who acknowledged the execution of the foregoing Declaration and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this ____ day of _____, 2012.

Printed: _____
Notary Public
County of Residence: _____
My Commission Expires: _____

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. By: Andrew S. Gutwein, Preparer

This instrument prepared by: **Andrew S. Gutwein**, of the Firm of **BENNETT BOEHNING & CLARY LLP**, Attorneys at Law, 415 Columbia Street, Suite 1000, Post Office Box 469, Lafayette, Indiana 47902 – Telephone: (765) 742-9066.

EXHIBIT A

A part of the Northwest Quarter of Section 18, Township 22 North, Range 4 West, Wea Township, Tippecanoe County, Indiana, being a part of the RBROOK, LLC property as described in Document Number 200101025914 in the office of the Tippecanoe County Recorder, and being depicted on an ALTA / ACSM Land Title Survey prepared by TBIRD Design Services Corp. Job Number 11049, more completely described as follows:

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201111009865

FILED FOR RECORD IN

TIPPECANOE COUNTY, IN

ONETA TOLLE, RECORDER

06/14/2011 10:38:17AM

COVENANTS 106.00

**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE RESERVE AT RAINEYBROOK PLANNED DEVELOPMENT**

Parcel Numbers:

| | |
|--------------|--------------|
| 144021200411 | 144021200279 |
| 144021200081 | 144021200280 |
| 144021200389 | 144021200290 |
| 144021200444 | 144021200301 |
| 144021200433 | 144021200312 |
| 144021200390 | 144021200323 |
| 144021200378 | 144021200334 |
| 144021200455 | 144021200015 |
| 144021200400 | 144021200026 |
| 144021200477 | 144021200037 |
| 144021200345 | 144021200048 |
| 144021200125 | 144021200059 |
| 144021200136 | 144021200060 |
| 144021200147 | 144021200070 |
| 144021200158 | 144021200092 |
| 144021200169 | 144021200103 |
| 144021200170 | 144021200114 |
| 144021200180 | 144021200367 |
| 144021200191 | 144021200499 |
| 144021200202 | 144021200488 |
| 144021200213 | 144021200235 |
| 144021200224 | 144021200422 |
| 144021200246 | 144021200356 |
| 144021200257 | 144021200466 |
| 144021200268 | |

NOT SUBJECT TO TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

JUN 14 2011

Jeannette Weston PF

AUDITOR OF TIPPECANOE CO.

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THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RESERVE AT RAINEYBROOK PLANNED DEVELOPMENT ("Declaration") is made and entered into as of May 5, 2011, by the Declarant and the Owners of the Lots in The Reserve at Raineybrook Planned Development by and through The Reserve at Raineybrook Homeowners Association, Inc., for themselves and on behalf of their successors, grantees, and assigns.

WITNESSETH THAT:

WHEREAS, Suesro, Inc., as Declarant, previously submitted the real estate described on Exhibit A (the "Real Estate") to certain covenants, restrictions and conditions to govern the use and occupancy of the lots located therein, pursuant to the document recorded on June 1, 2001, Instrument No. 01013383, OR Book 11, page 189, in the Office of the Recorder of Tippecanoe County, Indiana, which included Resolution No PD01-10, Bylaws of the Association, Articles of Incorporation of the Association, and Final Detailed Plans ("Planned Development Documents"). Said Planned Development Documents remain the same and are incorporated herein by reference only.

WHEREAS, Suesro, Inc. subsequently conveyed its fee simple interest in the Real Estate and assigned its rights and obligations to Rbrook, LLC, the successor Declarant ("Declarant").

WHEREAS, the Owners of Lots in The Reserve at Raineybrook Planned Development are members of The Reserve at Raineybrook Homeowners Association, Inc., a nonprofit corporation formed and existing under the laws of the State of Indiana ("Association").

WHEREAS, on January 25, 2011, Declarant and the Owners amended and restated the Declaration.

WHEREAS, the Owners of the Association held their annual meeting on May 5, 2011 for purposes of its annual business and for purposes of discussing and authorizing amendments to the First Amended and Restated Declaration. Declarant and all Owners of Lots were present at the meeting and the proposed amendments contained herein were unanimously approved by all parties.

WHEREAS, Declarant and the Owners desire that this Second Amended and Restated Declaration replace and supersede any and all prior Declarations and amendments regarding The Reserve at Raineybrook Planned Development.

NOW, THEREFORE, Declarant and the Owners hereby declare that the Real Estate described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Real Estate and be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1 - DEFINITIONS

As used in this Declaration, the following terms shall have the following meanings, unless the context clearly requires otherwise:

1.1 "Applicable Date" means the date Class B membership ceases to exist and is converted to Class A membership.

1.2 "Architectural Review Board" means the standing committee of the Association established in Article 11 hereof.

1.3 "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association. The Articles of Incorporation are incorporated herein by reference.

1.4 "Association" means The Reserve at Raineybrook Homeowners Association, Inc., an Indiana non-profit corporation, its successors and assigns.

1.5 "Board of Directors" means the Board of Directors of the Association.

1.6 "Bylaws" means the Bylaws of the Association. The Bylaws are incorporated herein by reference.

1.7 "Common Area" means all of the area designated as Common Area on the recorded Final Detailed Plans of The Reserve at Raineybrook Planned Development, including all ponds and drainage facilities, but exclusive of platted lots, Driveways, and any areas dedicated to the public.

1.8 "Common Expense" means expenses for administration of the Association and expense for the upkeep, maintenance, repair and replacement of the Common Area, and all other sums lawfully assessed against the Members by the Association or as declared by the Act, this Declaration, or the Bylaws.

1.9 "Declarant" means Raineybrook Realty Corp., its successors and assigns.

1.10 "Driveway" means the paved area between the road and a Dwelling Unit. Any portion of a Driveway which is shared by more than one Dwelling Unit is a Shared Driveway and any portion of a Driveway which serves only one Dwelling Unit is an Exclusive Driveway.

1.11 "Dwelling Unit" means the living unit located upon a lot.

1.12 "Lot" means any plot of ground designated as such upon the Plans of The Reserve at Raineybrook Planned Development or any part thereof and upon which any one (1) Dwelling Unit is constructed or may be constructed. The term Lot shall be deemed to include the Dwelling Unit, if any, located thereon.

1.13 "Member" means member of the Association.

1.14 "Mortgagee" means the holder of a first mortgage lien upon a Lot.

1.15 "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns fee simple title to a Lot.

1.16 "Owner Maintenance" means the maintenance, repair, or replacement of a) the exterior of a Dwelling Unit, including but not limited to landscaping, roofs, painting, siding, and trim, and b) the Exclusive Driveway and the respective share of any Shared Driveway. An Owner's respective share of a Shared Driveway is a fraction, the numerator of which is one and the denominator of which is the number of Dwelling Units served by the Shared Driveway.

1.17 "Plans" means the recorded Final Detailed Plans of The Reserve at Raineybrook Planned Development, as amended from time to time by recorded Amended Final Detailed Plans.

1.18 "Real Estate" means that certain real estate described in the attached Exhibit "A."

ARTICLE 2 - PROPERTY RIGHTS

2.1 **General Description of Property Rights.** Every Owner of a Lot will obtain fee simple ownership of said Lot and Dwelling Unit. The Association will perform certain regular maintenance tasks on the Common Area and the landscaping of each Lot as more fully described in Article 4 of these Declarations. Every Owner will be required to perform all other repairs, replacements and maintenance on that Owner's Lot and Dwelling Unit, including any additional landscaping planted by the Owner, and including all Owner Maintenance as more fully described in Article 11 of these Declarations.

2.2 **Ownership of Common Area.** The Common Area will be conveyed to or owned by the Association, and will be held for the use and enjoyment of the Owners. Each Owner has the right and easement of enjoyment in and to the Common Area, which right will pass with title to every Lot, subject to the provisions of this Declaration.

2.3 **Delegation of Use.** Any Owner may delegate his right of enjoyment to the Common Area and facilities to family members, guests, invitees, tenants, contract purchasers or other occupants. All such persons must observe all terms of this Declaration.

2.4 **Common Easements.**

(a) Each Owner will have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in the Common Area and serving such Owner's Dwelling Unit.

(b) An easement is hereby granted to the Association, its officers, agents and employees and to any management company selected by the Association to enter upon or cross over any Lot or the Common Area to perform its duties.

2.5 **Easement for Utilities and Public and Quasi-Public Vehicles.**

(a) All quasi-public vehicles including, but not limited to, police, fire and other emergency vehicles, trash and garbage collection, post-office vehicles and privately owned

delivery vehicles have the right to enter upon the Common Area in the performance of their duties.

(b) An easement is granted to all utilities and their agents for ingress, egress, installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity and television cable on the Real Estate as shown on the Plans. By virtue of this easement all of the foregoing utility companies are expressly permitted to erect and maintain the necessary equipment on the Real Estate and to affix and maintain wires, circuits and conduits on the exterior walls of Dwelling Units.

(c) Notwithstanding the utility easement granted in Section 2.5 (b) above, all water, sewer, gas, electric, telephone and cable television utilities are to be underground. No utility shall place any improvements or utility structures in any location upon the Real Estate which would interfere with other improvements shown on the Plans. No sewers, electric lines, water lines or other utilities may be installed upon the Real Estate except as initially designed and approved by Declarant on the Plans or as thereafter may be approved by Declarant or by the Board of Directors.

(d) If any utility furnishing service requests a specific easement by a separate recordable document, Declarant has the right to grant such easement, provided that no such easement conflicts with the Plans. Any easements granted herein do not affect any other recorded easement with respect to the Real Estate.

ARTICLE 3 - ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

3.1 **Membership.** Every Owner of a Lot is a Member of the Association. Membership is appurtenant to each Lot and may not be separated from ownership of any Lot.

3.2 **Classes of Membership.** The Association shall have two classes of membership:

(a) Class A: Class A Members are all Owners, except the Declarant, its successors and assigns. Ownership of a Lot is the sole qualification for Class A membership.

(b) Class B: The Class B Member is the Declarant, its successors and assigns. Class B membership applies to any Lot owned by Declarant, its successors and assigns.

(c) Class B membership will cease and be converted to Class A membership upon the first to occur of the following dates:

(1) The date when the written resignation of the Class B Member, as such, is delivered to the Resident Agent of the Association; or

(2) The date when the total votes outstanding in Class A membership equal or exceed the total votes outstanding in Class B membership; or

(3) December 31, 2010.

3.3 Voting Rights.

(a) Each Class A Member is entitled to cast one vote for each Lot owned by such Member.

(b) The Class B Member is entitled to cast three votes for each Lot owned by such Member.

(c) When more than one person is an Owner of a Lot, all such persons will be Members, but their total vote will not exceed one per Lot owned, and such vote will be cast as one unit in such manner as the majority of the Owners of such Lot may agree. In the event such Owners fail to reach agreement, they will not be entitled to vote and will be considered as abstaining. In the event some of such Owners do not attend the meeting, in person or by proxy, those Owners who are in attendance, in person or by proxy, will be considered as the sole Owner of the Lot, for purposes of determining the manner in which their vote is cast.

(d) The Board of Directors may suspend the voting rights of a Member during any period in which such Member shall be in default in payment of any assessment levied by the Association.

ARTICLE 4 – FUNCTIONS OF ASSOCIATION

4.1 **Functions.** The Association has been formed for the purpose of carrying out the following functions:

(a) providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Area including all lawns and landscaping and providing for snow removal from driveways;

(b) the enforcement of the covenants contained herein;

(c) the payment of taxes assessed against the Common Area;

(d) the payment of charges for utility service to the Common Area (including electricity for street lighting), and any other necessary expenses and costs in connection with the Common Area;

(e) providing for snow removal and the maintenance of entrance signage and other signage, including traffic control signage, in all public right of way areas within the Real Estate until such time as Tippecanoe County or some other appropriate municipal authority assumes all or any portion of such responsibility;

(f) the performance of all other functions designated in this Declaration.

4.2 **Board of Directors.** The Association will carry out its functions through its Board of Directors. The decision of the Board of Directors with respect to any maintenance, repair or replacement of the Common Areas shall be final. The powers, limitations on powers, compensation, duties, qualifications, terms of office, method of election, method of removal and other provisions concerning the Board of Directors are as set forth in the Articles of Incorporation and the Bylaws.

ARTICLE 5 - COVENANT FOR ASSESSMENTS

5.1 **Payment of Assessments.** Each Owner covenants and agrees by acceptance of a deed for any Lot, to pay to the Association all assessments levied by the Association.

5.2 **Use of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Members and for the costs and expenses incident to operation of the Association and payment of Common Expenses.

5.3 **Regular Assessment.**

(a) **Proposed Annual Budget.**

(1) Prior to the annual meeting of the Association, the Board of Directors will cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses to be incurred for the current fiscal year. Said budget will be furnished to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners.

(2) **No Waiver of Obligations.** The failure or delay of the Board of Directors to prepare a proposed annual budget or to furnish a copy thereof to the Owners will not constitute a waiver or release of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined.

(b) **Adoption of Annual Budget.** At the annual meeting of the Owners, an annual budget will be adopted. The proposed budget may be approved in whole or in part and may be amended in whole or in part by a majority vote of the Members who are voting.

(c) **Determination of Regular Assessment.** The annual budget as adopted by the Owners will establish the Regular Assessment against each Lot. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses included in the final annual budget.

(d) Notice of Regular Assessment. Immediately following the adoption of the annual budget, each Owner will be given written notice of the Regular Assessment. Payment will be due and payable automatically without any further notice from the Association, and the Association is not responsible for providing any additional notice or statements to Owners for the same.

(e) Payment of Regular Assessment. The Regular Assessment against each Lot will be paid in advance in equal monthly installments commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Owners may elect to pay assessments quarterly, semi-annually or annually, in advance. Payment will be made to the Board of Directors or any Managing Agent, as directed by the Board of Directors.

5.4 Special Assessments.

(a) Purpose. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures, service costs in excess of the annual budget, and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

(b) Adoption. Any Special Assessment must be approved by a majority vote of the Members who are voting in person or by proxy. All Special Assessments must be fixed at a uniform rate for each Lot.

(c) Notice. Immediately following the adoption of any Special Assessment, each Owner will be given written notice of the Special Assessment. Payment will be due and payable automatically without any further notice from the Association, and the Association is not responsible for providing any additional notice or statements to Owners for the same.

(d) Payment. The notice of Special Assessment will include the terms of payment. Payment will be made to the Board of Directors or any Managing Agent, as directed by the Board of Directors.

5.5 Lien of Assessments.

(a) Regular Assessments. The Regular Assessment for the current fiscal year of the Association becomes a lien on each Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date.

(b) Special Assessments. Any Special Assessment becomes a lien on each Lot upon adoption of such by the Association.

(c) Subordination to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the Bylaws, any sale or transfer of a lot to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosure shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

5.6 Certificate of Assessments. The Association will, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments

on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

ARTICLE 6 - INITIAL CONTROL BY DECLARANT

6.1 Purpose. During the period that Dwelling Units are being constructed within the Real Estate, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this Section is to provide the method of the payment of the Common Expenses during the period prior to the Applicable Date to enable the Association to perform its duties and functions.

6.2 Operation by Initial Board of Directors. Notwithstanding any other provision contained in the Declaration, the Articles or Bylaws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board of Directors without any meeting or concurrence of the Owners subject to the limitations contained in this Section.

6.3 Limitations on Authority.

(a) Management Agent. The Association will enter into a management agreement with Declarant or other entity designated by Declarant (hereinafter referred to as "Management Agent" or "Managing Agent"). So long as such management agreement (or any similar agreement) remains in effect, the Common Expenses and Regular Assessments shall be paid by Owners to Management Agent. Each Owner hereby authorizes the Association and the Board of Directors and its officers to enter into the management agreement described in this Declaration and to adhere to and abide by the same.

(b) Initial Charge. The Regular Assessment shall initially be set at One Hundred Sixty Dollars per month (\$160.00/month) (the "Initial Charge").

(c) Maximum Annual Increase. Until the Applicable Date, Declarant guarantees that the monthly Regular Assessment will not exceed the amount of the Initial Charge plus a maximum of a twenty percent (20%) increase in the Initial Charge for each year.

6.4 Non-Payment of Assessments by Declarant. Payment of Regular Assessment prior to the Applicable Date with respect to each Lot now owned by the Declarant shall commence on the date of conveyance by Declarant to a new Owner. The first payment shall be payable on the date of conveyance prorated to the first day of the calendar month next ensuing.

Notwithstanding any provisions herein to the contrary, Declarant or their designee shall not be responsible for regular or special assessments for Lots owned by Declarant unless occupied for residential purposes.

ARTICLE 7 - FAILURE OF OWNER TO PAY ASSESSMENTS

7.1 No Owner may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expense or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot belonging to him. Each Owner is personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the Board of Directors may take any or all of the following actions:

- (a) file and foreclose the assessment lien as a mortgage on real property or as otherwise provided by law;
- (b) accelerate the entire balance of unpaid assessments for the current fiscal year;
- (c) appoint a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Assessments;
- (d) bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same;
- (e) suspend the right to use the recreational facilities, if any.

7.2 If the Association is required to take any action to recover a Regular Assessment or Special Assessment, it will be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys fees) and interest from the date such assessments were due until paid at the rate of 1.5% per month.

ARTICLE 8 – CONTROL AND RESTRICTIONS OF COMMON AREAS

8.1 The Association may, upon approval by vote of at least sixty-seven percent (67%) of the Members, dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and upon such conditions as may be acceptable to the Association, provided that any such dedication or transfer shall be subject to acceptance thereof by the public agency.

8.2 No Owner is allowed to plant trees, landscape or do any gardening in any of the Common Area.

8.3 No boats are permitted on the Lake, except those provided by the Association.

8.4 No swimming is permitted in the Lake.

8.5 The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area. Copies of rules and regulations shall be furnished by the Board of Directors to the Owners prior to the time when they shall be effective.

ARTICLE 9 - COVENANTS AND RESTRICTIONS

The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Common Area are in addition to any other covenants or restrictions contained herein and in the Plans, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and will run with the land and inure to the benefit of and be enforceable by any Owner, or by the Association. Any conflict between this Declaration and the Plans will be controlled by the Plans. Present and future Owners of the Association are entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and, in addition, are entitled to damages for any injuries

or losses resulting from any violations thereof, but there is no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

9.1 Drainage Plan. The owner of any Lot is responsible for compliance with the provisions of the drainage plan as approved for this plat by the Tippecanoe County Drainage Board and the requirements of all drainage permits for this plat issued by said Department.

(a) The Association is responsible for the maintenance and repair of the Storm Water Drainage System and the Storm Water Detention Basin, together with its outlet and water level control structures, until such time as Tippecanoe County or some other appropriate municipal authority assumes such responsibility.

(b) Any Owner, the Board of Commissioners of Tippecanoe County and/or the Tippecanoe County Drainage Board, or any other appropriate municipal authority shall have the right to order the Association to carry out its obligation to maintain, repair and/or replace the landscaping, Storm Water Drainage System and Storm Water Detention System Improvements, as above provided, and to assess the Owners with the cost thereof.

(c) No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Storm Water Drainage and Storm Water Detention Systems or abandonment of his Lot.

(d) The Declarant, its successors and assigns, hereby waives any and all right to object to the establishment of the Storm Water Drainage System and Storm Water Detention System of The Reserve at Raineybrook Planned Development as a legal drain under the management and control of the Tippecanoe County Drainage Board and/or the Tippecanoe County Board of Commissioners.

9.2 Erosion Control.

(a) The Developer has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15 Storm Water Run-Off Associated with construction Activity, a copy of which is on file with the Developer.

(b) The Owner agrees to follow and is responsible for all erosion control measures contained therein as the plan applies to "land disturbing activity" undertaken by Owner or Owner's subcontractors, and agrees to comply with the terms of the Developer's general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities.

(c) The Owner is responsible for controlling the activities of his contractors by requiring such items as silt fence, temporary gravel construction entrance, temporary seeding, inlet protection and other erosion control measures as may be necessary. In particular, the Owner shall be responsible for complying with Step 1 through Step 6, inclusive, of the attached Exhibit "B." All erosion control measures must be performed by personnel trained in erosion control practices and must meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources, as amended from time to time.

(d) By assuming ownership of the Lot, the Owner thereby releases the Developer, the Building Committee, and the Developer's Engineer from all responsibility for land disturbing activities upon the Lot. The Owner shall indemnify and hold Developer harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or be connected with, any work done by Owner, Owner's employees, agents, contractors or subcontractors.

(e) All lawns will be seeded and straw covered, sodded, or otherwise protected, from erosion onto adjoining real estate, as determined by the Architectural Review Board.

9.3 Nuisance. No noxious, offensive, unlawful or immoral activity may be carried out upon any Lot or Common Area, nor may anything be done thereon which may become an annoyance or nuisance to the

neighborhood. The Board of Directors' determination as to what is a violation of this restriction will be conclusive.

9.4 Construction Standards. All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family. The Dwelling Unit erected, altered, placed or permitted to remain on any building lot, shall comply with the following requirements:

- (a) Each Dwelling Unit will have an attached garage. Such garage shall not be less than "two-car".
- (b) Each one story Dwelling Unit will have a minimum of 1500 square feet of livable floor area. Each two story Dwelling Unit shall have a minimum of 1800 square feet of livable floor area. Livable floor area does not include garages, basements, open porches or open breezeways.
- (c) Each Dwelling Unit will be designed with a minimum of two (2) bathrooms.
- (d) All permanent driveways shall be constructed of nonreinforced concrete meeting the requirements set out in the most current issue of "The Reserve" at Raineybrook Planned Development – *Builders Specifications*.

9.5 Accessory Uses.

- (a) No accessory outbuildings or fences can be erected on any of the Lots except those constructed by Declarant or the Association in the right of way or Common Areas.
- (b) Satellite dishes, TV antennas, or towers of any type, are not permitted on any lot, except that satellite dishes up to 18" in diameter may be installed following approval of the Architectural Review Board pursuant to Section 11 of this Declaration. Overhead utility lines, including power and telephone, shall be held to a minimum and all service lines to the dwelling shall be underground.
- (c) No gasoline or other fuel storage tanks are permitted on any Lot.
- (d) No outside clothesline shall be erected, placed or allowed to remain on the Real Estate.

(e) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior written consent of the Architectural Review Board, except that "For sale", "for rent" or "for lease" signs may be displayed upon the Real Estate only for reasonable periods and only upon the Lot to which such sign relates.

9.6 Timely Performance.

(a) Every Dwelling Unit, or other structure permitted to be constructed or to remain on any Lot, must be completed on the exterior within six (6) months from the start of construction. Such exterior completion includes at least one (1) coat of paint, stain or varnish on any exterior wood surfaces, and site grading, sodding or seeding and landscaping. During the period of construction of any structure on any Lot, the Lot must be kept and maintained in a sightly and orderly manner. No trash or other rubbish is permitted to accumulate on any such Lot.

(b) No Dwelling Unit which has partially or totally been destroyed by fire or otherwise damaged will be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

9.7 Storage of Vehicles. No boat, or travel trailer, or motor home of any description shall be stored on any lot exposed to view from the street or neighboring lot. No unlicensed vehicle is permitted on any Lot (unless stored in a garage and not exposed to view) or street for more than twenty-four (24) hours. All automobile repairs for gain are prohibited, and if performed by Owner for a member of that household, said repairs must be performed in the garage and not exposed to view.

9.8 Pets. No animals may be kept or maintained on any Lot except usual household pets, namely dogs and cats. Any household pet must be kept reasonably quiet and contained, so as not to become a nuisance. No Owner may have more than two (2) household pets on any Lot at any one time.

9.9 Mailboxes. Subject to U.S. Postal Regulations, the Declarant reserves the right to approve the type of mailboxes installed on the Real Estate.

9.10 Use by Declarant. Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, Declarant has the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units and Lots owned by Persons other than Declarant), as Declarant deems advisable or necessary in its sole discretion. Such uses include uses to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units, and any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant has the right to relocate any or all of the same from time to time as it desires. At no time will any of such facilities so used or maintained by Declarant be or become part of the Common Area, unless so designated by Declarant, and Declarant has the right to remove the same from the Real Estate at any time. Declarant's use of the Real Estate as provided above will be limited to uses directly related to management and development of the Real Estate.

9.11 Activities in Conservation Easements. The areas shown on the recorded final detailed plans and/or plats as conservation easements are intended to remain in their natural state. No fertilizers, herbicides, or other chemicals may be applied or otherwise deposited in such areas. No mechanical equipment (i.e., lawn mower, weed trimmer, etc.) may be operated or otherwise used in such areas. Any clearing or other activities which would disturb the natural state of such areas may be done only with the prior approval of the Developer, or its successors or assigns.

9.12 Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Association and treated as a Common Expense.

9.13 Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered, if any, shall be treated as and paid as part of the Common Expense unless otherwise determined by the Association.

9.14 High Risk Activities. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Area which will result in a cancellation of insurance or increase in insurance premium on any part of the Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

9.15 No Business Activity. Except for management of the affairs of the Association, no industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on the Real Estate; provided, however, this restriction shall not be construed to prevent an Owner from (a) maintaining his professional library therein; (b) keeping his personal, business or professional records or accounts therein; or (c) handling his personal business or professional telephone calls or correspondence therein. Such uses are expressly declared customarily incident to the principal residential use and not in violation of any restrictions under this Section.

9.16 Garbage. The Common Area shall be kept free and clear of rubbish, debris and other unsightly materials. Trash, garbage or other waste must be kept in sanitary containers, out of view of other Lots and the street, except that garbage containers may be placed within view for the purpose of garbage pick-up pursuant to procedures established by the Association.

9.17 Rental. No Owner may rent or lease his Dwelling Unit for transient or hotel purposes. Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written Lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration shall be a default under the lease. A copy of each such lease shall be provided to the Association. No unit shall be occupied by any persons other than the Owner for over two (2) years without a vote of fifty-one percent (51%) of the members.

9.18 Additional Rules. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area. Copies of rules and regulations shall be furnished by the Board of Directors to the Owners prior to the time when they shall be effective.

ARTICLE 10 - AMENDMENT OF DECLARATION

10.1 Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) Notice. Notice of the subject matter of any proposed amendment will be included in the notice of the meeting at which the proposed amendment is to be considered.

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or by Owners having in the aggregate at least a majority of the votes of all Owners.

(c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the Bylaws.

(d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than fifty-one percent (51%) of the votes of all Owners.

(e) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provision of this Declaration with respect to casualty insurance or fidelity bonds to be maintained by the Association, or (3) the provisions of this Declaration with respect to reconstruction or repair of the Common Area in the event of Fire or any other casualty or disaster, or (4) the provisions of this Declaration establishing the Architectural Review Board and providing for its functions, or (5) the provisions of this Declaration with respect to the commencement of assessments on any Lot, without, in each and any of such circumstances, the unanimous approval of all Owners.

(f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Tippecanoe County, Indiana, and such amendment shall not become effective until so recorded.

10.2 Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagee or any other person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made:

(a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities,

(b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering lots and Dwelling Units,

(c) to bring this Declaration into compliance with any requirements of applicable statutes, regulations or ordinances, or

(d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make or consent to any such amendments on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof will be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendment. The right of the Declarant

to act pursuant to rights reserved or granted under this Section will terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

10.3 Amendment Prior to the Applicable Date. Notwithstanding anything to the contrary contained herein, there shall be no amendment of the Declaration prior to the Applicable Date without the consent and approval of Declarant.

10.4 Approval of Amendments. Notwithstanding anything to the contrary contained herein, there shall be no amendment of the Declaration with respect to any provision relating to project design, use of the completed lots or maintenance of any improvements by the Association, nor any material change with regard to governance of the Association, without the prior approval of the Tippecanoe County Area Plan Commission.

ARTICLE 11 - ARCHITECTURAL CONTROL

11.1 The Architectural Review Board. As a standing committee of the Association, there shall be, and hereby is, established an Architectural Review Board consisting of five (5) members. Until the earlier of (a) the completion of the construction of a Dwelling Unit on each Lot or, (b) December 31, 2020, three (3) members will be the Initial Board of Directors (set out in the Articles of Incorporation of the Association), and two (2) members will be appointed by the Board of Directors from time to time. Upon the earlier of (a) completion of the construction of a Dwelling Unit on each Lot or, (b) December 31, 2020, the Board of Directors will then appoint all of the members. Each member appointed by the Board of Directors will be appointed to serve a 3-year term unless they resign, are removed, or otherwise become disqualified to serve. Except for the Initial Board of Directors or their successors, any Architectural Review Board member may be removed from office with or without cause by the Board of Directors. Any Architectural Review Board member may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation will not be necessary to make it effective. Except for the Initial Board of Directors or their

successors, a vacancy on the Architectural Review Board may be filled by appointment by the Board of Directors. The member so appointed to such vacancy shall serve for the remainder of the term of the member they replace. In the event any member of the Initial Board of Directors resigns from the Architectural Review Board or dies, the remaining members of the Initial Board of Directors may appoint a successor.

11.2 Function. The Architectural Review Board shall regulate the external design, appearance, use and location of improvements on the Real Estate for the purpose of preserving and enhancing values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

11.3 Conditions. No improvements, alterations, repairs, landscaping, excavation, changes in grade or other work which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior written approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board. The Architectural Review Board may impose any conditions or limitations upon approval which it deems appropriate.

11.4 Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application, including all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt, have been given to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of all the Directors then serving. The Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.

11.5 Acceptance and Acknowledgment of Owner. No approval of the Architectural Review Board is effective until the Owner requesting such approval accepts and acknowledges the Board's approval, together with any conditions or limitations imposed, in writing. In the event approval is deemed granted by the Board's failure to approve, modify or disapprove an application, such Owner must proceed in strict compliance with his application and all plans, drawings, specifications and other items submitted therewith.

11.6 Maintenance of Architectural Control. The Association may not waive or abandon the procedure for regulating and enforcing the architectural design of the Dwelling Units nor for maintaining the Common Area without the prior written approval of all Owners.

11.7 Oversight of Owner Maintenance. In addition to the functions set out above, the Architectural Review Board will determine when any Owner Maintenance is needed. The Architectural Review Board will notify the Board of Directors of such determination and the Board of Directors will then notify the Owner.

11.8 Responsibilities of Owner for Owner Maintenance. If an Owner is notified by the Board of Directors of any required Owner Maintenance, the Owner must arrange for and schedule the Owner Maintenance, and inform the Board of Directors of the work schedule. All work must meet all of the requirements of this Declaration and the specifications listed in the current issue of the "The Reserve" at Raineybrook Planned Development – *Builders Specifications*. The Owner is responsible for all costs of Owner Maintenance.

11.9 Failure of Owner to Schedule or Perform Owner Maintenance. The Owner must arrange for and schedule the Owner Maintenance and inform the Board of Directors of the work schedule within thirty (30) days of the date the owner is notified of the required Owner Maintenance by the Board of Directors. The work schedule must be acceptable to the Board of Directors, which acceptance will not be unreasonably withheld. If the Owner fails to have the Owner Maintenance performed and completed per the submitted work schedule, the Board of Directors may have the Owner Maintenance completed

without the approval of the Owner and invoice said Owner for all costs associated with the Owner Maintenance, plus an administration fee of 10% of the total costs. The Owner shall have fifteen (15) days from receipt of the invoice to pay the charges. If the Owner fails to pay the invoice within fifteen (15) days from the receipt of the invoice, the Board, in its discretion, may impose a late fee equal to ten percent (10%) of the total invoice charges and declare the same immediately due and payable. Such outstanding amount may be collected under the same conditions as the collection of a delinquent Assessment per Article 7.

ARTICLE 12 - INSURANCE

12.1 **Public Liability Insurance.** The Association will purchase a master comprehensive public liability insurance policy in an amount not less than \$1,000,000 for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy will cover the Association, the Board of Directors, any committee or organization of the Association or Board of Directors, any Managing Agent appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy will contain a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Such public liability insurance policy will contain a provision that such policy will not be canceled or substantially modified without at least ten (10) days written notice to the Association.

12.2 **Other Insurance.** The Association will also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the corporation and officers' and directors' liability policies. Such insurance coverage will also provide for and cover cross liability claims of one insured party against another insured party. Such insurance will

inure to the benefit of each Owner, the Association, the Board of Directors and any Managing Agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors, the proceeds of which are payable to the Board of Directors or the Association.

12.3 General Provisions. The premiums for all insurance hereinabove described will be paid by the Association as part of the Common Expense. Under no circumstances will any distribution of insurance proceeds or condemnation awards be made by the Association to any Owners if to do so would be in violation of the Indiana Not-For-Profit Corporation Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Association; in any such event, any such insurance proceeds or condemnation awards will be retained by the Association for use in the payment of Common Expenses.

12.4 Insurance by Owners. Each Owner has the right to purchase such additional insurance at his own expense as he may deem necessary.

12.5 Condemnation Awards. All proceeds payable as a result of condemnation shall be paid to the Association to act as trustee and hold such proceeds for the benefit of the individual Owners.

12.6 Restoration of Common Area. In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Association will promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, will be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the cost thereof in excess of insurance proceeds received, if any) will be assessed by the Association against all of the Owners as a Special Assessment.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as existed immediately prior to the damage or destruction and with the same type of architecture.

ARTICLE 13 - GENERAL PROVISIONS

13.1 **Acceptance and Ratification.** All present and future Owners, Mortgagees, tenants and occupants of the Lots are subject to and must comply with the provisions of this Declaration, the Articles of Incorporation, and the Bylaws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot constitutes an agreement that the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant, or occupant, and all such provisions will be covenants running with the land and are binding on any person having at any time any interest or estate in a Lot or the Real Estate as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

13.2 **Negligence.** Each Owner is liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner must pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or its appurtenances or of the Common Area.

Notwithstanding any obligation or duty of the Association to repair or maintain the Common Area, if due to the willful, intentional or negligent acts or omissions of Owner or of a member of such Owner's family or a guest, tenant, invitee or other occupant or visitor of such Owner, damage is caused to the Common Area, or if maintenance, repairs or replacements are required thereby which would otherwise be a Common Expense, then such Owner will pay for such damage and such maintenance,

repairs and replacements as may be determined by the Association unless such loss is covered by an insurance policy owned by the Association which contains a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage will be added to and become part of the assessment against such Owner's Lot.

13.3 Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Bylaws, will not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the Bylaws, and each are to be enforced to the greatest extent permitted by law.

13.4 Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

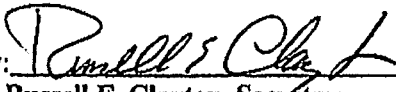
13.5 Interpretation. The captions and titles of the various articles, sections or subsections of this Declaration are inserted herein for ease and convenience of reference only and are not be used as an aid in interpreting or construing this Declaration or any provision thereof. This Declaration is to be interpreted and applied consistent with the Articles and By-Laws. To the extent a consistent interpretation is not possible, this Declaration will control.

13.6 Enforcement. The Association, any Owner, and the applicable municipal authority shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. The enforcing party shall be entitled to recovery of its costs and expenses of enforcement, including attorneys' fees, in any such enforcement action. Failure to enforce any covenant or restriction herein contained will in no event be deemed a waiver of the right to do so thereafter.

IN WITNESS WHEREOF, the undersigned, being the Declarant, and the Owners of Lots by and through The Reserve at Raineybrook Homeowners Association, Inc., have caused this Declaration to be executed this 13 day of June, 2011.

DECLARANT:

RBROOK, LLC

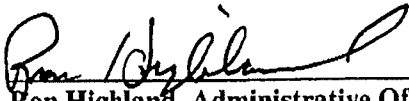
By: 

Russell E. Clayton, Secretary

APPROVAL OF THE ADMINISTRATIVE OFFICER
FOR TIPPECANOE COUNTY

The undersigned hereby approves this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Reserve at Raineybrook Planned Development in accordance with the provisions of Section 10.4 of the Declaration dated January 25, 2011.

Dated: 5/27 /, 2011

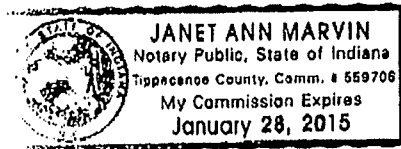


Ron Highland, Administrative Officer
for Tippecanoe County

STATE OF INDIANA)
)SS:
COUNTY OF TIPPECANOE)

Before me, a Notary Public in and for said County and State, personally appeared **Rbrook, LLC, by Russell E. Clayton, its Secretary**, who acknowledged the execution of the foregoing Declaration and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this 31 day of May, 2011.

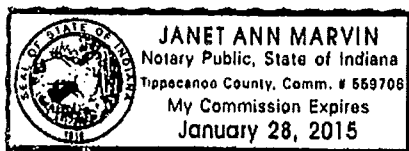


Janet Ann Marvin
Printed: _____
Notary Public
My Commission Expire: _____
County of Residence: _____

STATE OF INDIANA)
)SS:
COUNTY OF TIPPECANOE)

Before me, a Notary Public in and for said County and State, personally appeared **The Reserve at Raineybrook Homeowners Association, Inc., by Linda Gregory and Lori Shofroth, its President and Secretary, respectively**, who acknowledged the execution of the foregoing Declaration and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this 13 day of June, 2011.



Janet Ann Marvin
Printed: _____
Notary Public
My Commission Expire: _____
County of Residence: _____

STATE OF INDIANA)
)SS:
COUNTY OF TIPPECANOE)

Before me, a Notary Public in and for said County and State, personally appeared **Ron Highland, Administrative Officer for Tippecanoe County**, who acknowledged the execution of the Approval of the foregoing Declaration and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this 17 day of May, 2011.



Janet Ann Marvin
Printed: _____
Notary Public
My Commission Expire: _____
County of Residence: _____

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. By: Andrew S. Gutwein, Preparer

This instrument prepared by: **Andrew S. Gutwein**, of the Firm of **BENNETT BOEHNING & CLARY LLP**, Attorneys at Law, 415 Columbia Street, Suite 1000, Post Office Box 469, Lafayette, Indiana 47902
– Telephone: (765) 742-9066.
(2ND A&R RESTRICTIVE COVENANTS (final))

EXHIBIT "A"
Legal Description

A part of the West half of Section 18, Township 22 North, Range 4 West, Wea Township, Tippecanoe County, Indiana, described as follows:

Commencing at a Berntsen monument marking the southeast corner of the southwest quarter of said Section 18; thence North 00°03'56" West, along the eastern line of the Southwest quarter of said Section 18, a distance of 2022.10 feet to the southern line of the Suesro, Inc. real estate as described in Deed Record 76-4945 in the Office of the Recorder of Tippecanoe County, Indiana; thence North 89°13'56" West, along said southern line, a distance of 1328.60 feet to the western line of said Suesro, Inc. real estate; thence North 00°21'04" East, along said western line, a distance of 211.93 feet to the point of beginning of this description; thence continuing North 00°21'04" East along said Western line, a distance of 445.94 feet; thence North 00°39'04" East, continuing along the western line of said Suesro, Inc. real estate, a distance of 660.00 feet to the northern line of said Suesro, Inc. real estate; thence South 89°03'56" East, along said Northern line, a distance of 1087.03 feet; thence South 00°57'46" West a distance of 50.47 feet; thence South 05°46'54" East a distance of 490.44 feet; thence South 12°55'01" West a distance of 435.03 feet; thence North 75°41'55" West a distance of 57.97 feet; thence South 86°42'23" West a distance of 138.25 feet; thence South 00°47'23" West a distance of 144.99 feet; thence North 89°12'37" West a distance of 830.11 feet; thence westerly, along a tangent curve to the right having a central angle of 05°47'57", a radius of 220.00 feet, and an arc length of 22.27 feet to the point of beginning, containing 27.177 acres, more or less.

The above bearings are based upon Raineybrook Estates Subdivision.